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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

JANEY M. McMULLEN,

Plaintiff and Appellant,

v.

ROY EDD JONES, as Trustee, etc.,

Defendant and Respondent.

2d Civil No. B195908
(Super. Ct. No. PR 060153)
(San Luis Obispo County)

JANEY M. McMULLEN,

Plaintiff and Appellant,

v.

THE GUARDIAN INSURANCE &
ANNUITY COMPANY, INC.,

Defendant and Respondent.

(Super. Ct. No. CV 040125)

Appellant Janey M. McMullen appeals from an order directing disbursement of annuity funds. The annuity was an asset of the Roy Edd Jones Trust. Respondent Roy Edd Jones is the sole beneficiary of the trust. In a prior unpublished decision, we held that Jones owned all assets in the trust. On appeal, McMullen contends

the court made several procedural errors in making the order disbursing the funds. We affirm.

FACTS AND PROCEDURAL HISTORY

Appellant Janey M. McMullen (McMullen) is the daughter of Janey McMullen Jones (Janey). Respondent Roy Edd Jones (Jones) was married to Janey for 40 years prior to her death in 1999. In 1977, Janey and Jones created a revocable living trust to hold their community property (the trust).

In a prior unpublished opinion, we affirmed summary judgment in favor of Jones on a complaint filed by McMullen for conversion and breach of fiduciary duty. We held that, pursuant to the express provisions of the trust, all the property in the trust was the sole property of Jones and that McMullen had no entitlement to distributions of income or principal from the trust. (*McMullen v. Jones* (Apr. 29, 2003, B158652) [nonpub. opn.].)

On February 13, 2004, McMullen filed a complaint for declaratory relief, for conversion, and for constructive trust seeking a declaration of her rights in an annuity held in the trust and funded by Guardian Insurance & Annuity Company, Inc. (Guardian). (Super. Ct. No. CV 040125.)

Subsequently, the parties entered into a stipulation regarding the distribution of the annuity funds. In the stipulation, Guardian agreed to disburse the funds held in the annuity within 30 days of receipt of an order from the trial court directing payment of the funds in exchange for dismissal from the lawsuit.¹ On January 24, 2005, the court sustained Jones's demurrer to the complaint on the ground that the action was barred by the doctrine of res judicata. On September 21, 2006, Jones filed a motion for order directing disbursement of annuity funds. On November 21, 2006, the trial court issued an order directing Guardian to disburse funds in the annuity.

McMullen appealed the order on December 28, 2006. Jones filed a motion to dismiss the appeal on the ground that it had become moot or was barred by the

¹ We granted Jones's request to take judicial notice of the stipulation.

doctrine of res judicata. We denied the motion without prejudice to his right to renew the argument in his brief on appeal.

In this appeal, McMullen contends that the trial court had no power to order disbursement of the annuity funds after it had sustained Jones's demurrer to the complaint, our previous decision is not res judicata because Guardian was not a party in the previous case, and the trial court made the order without admissible evidence. Jones contends that the appeal should be dismissed because our previous opinion holding that all the assets of the trust were the sole property of Jones is res judicata. Jones is correct.

DISCUSSION

McMullen's appellate briefs are not in compliance with the California Rules of Court. The briefs do not contain adequate citations to the record, relevant legal authority, or coherent legal argument. As her briefs contain no reasoned argument or legal authority to support her contentions, we may treat her claims as waived. (*People v. Stanley* (1995) 10 Cal.4th 764, 793; *Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99; *Stokes v. Henson* (1990) 217 Cal.App.3d 187, 196.) However, instead of dismissing the appeal summarily, we will briefly address the issues in the hope that this will fully and finally put an end to this litigation.

The court's authority to order disbursal of the annuity funds is statutory. Probate Code section 1046 states: "The court shall hear and determine any matter at issue and any response or objection presented, consider evidence presented, and make appropriate orders." Therefore, McMullen's argument that sustaining the demurrer to the complaint divested the court of jurisdiction to hear and determine Jones's petition for disbursal of the annuity funds is without merit.

In our prior opinion, we held that Jones was the sole beneficiary of the trust and "his decisions regarding payments from the survivor's and bypass trusts are within his sole discretion." In the present case, McMullen presented no competent evidence that the annuity was not an asset of the trust or that she had any interest whatsoever in the annuity. In fact, McMullen admits in her complaint that Jones is the beneficiary of the annuity. The only evidence in the record as to ownership of the annuity is contained in

the trustee's report which states: "The named beneficiary of the Annuity is, and always has been, the Roy Edd Jones Trust." Therefore, our prior opinion is res judicata as to the ownership of the annuity funds.

McMullen contends that res judicata does not apply because Guardian was not a party to the prior action. The argument is without merit. McMullen and Jones were adversaries in the prior action and are adversaries in the present action. Res judicata precludes parties from relitigating a cause of action that has finally been determined in a prior action. The presence of Guardian in the current action does not impact the res judicata effect of the prior judgment as to McMullen and Jones. (Code Civ. Proc., § 1908, subd. (a)(2); *Morris v. Blank* (2001) 94 Cal.App.4th 823, 831.)

McMullen's argument that the court ordered disbursal of the annuity funds without admissible evidence also is devoid of merit. The record shows the court ordered disbursal of funds after considering the pleadings, exhibits and documents submitted by the parties and after hearing oral argument. The order was sufficient under Probate Code section 1047, which states, "an order made in a proceeding under this code need not recite the existence of facts, or the performance of acts, upon which jurisdiction depends, but need only contain the matters ordered." (See *In re Goldberg's Estate* (1938) 10 Cal.2d 709, 712 [since probate orders need not recite the existence of facts, the presumption is that official duty has been regularly performed].)

The order is affirmed. Respondent Jones shall recover costs.

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PERREN, J.

We concur:

GILBERT, P.J.

COFFEE, J.

Barry LaBarbera, Judge
Superior Court County of San Luis Obispo

Clark D. Nicholas for Appellant.

Carsel & Attala and Richard A. Carsel for Respondent Jones.

No appearance for Respondent Guardian.